

CHAPTER 27
ASSISTED LIVING PROGRAMS

321—27.1(231C) Definitions.

“Dwelling unit” means an apartment, group of rooms, or single room occupied as a separate living quarter or, if vacant, intended for occupancy as a separate living quarter, in which the occupants can live and sleep separately from any other persons in the building and which has direct access from the outside of the building or through a common hall.

“Health care professional” means a physician, physician’s assistant, or licensed nurse.

“Part-time or intermittent” means the less than daily provision of skilled nursing services and professional therapies for temporary, but not indefinite, periods of time of up to 21 days a month; but does not include 24-hour care provided by a licensed nurse or other licensed health care professional. Skilled nursing services and professional therapies which are provided daily shall be for no more than 8 hours a day when combined with nurse-delegated activities and personal care.

“Supervision of self-administration” means activities including prompting and reminding, opening of containers or packaging, reading instructions and other label information in order for the tenant to administer a medication to self.

321—27.2(231C) Certification and voluntary accreditation.

27.2(1) Recognition of voluntary accreditation.

a. A list of organizations recognized by the department for the purposes of voluntary accreditation of assisted living programs will be available from the department.

b. An entity voluntarily accredited as an assisted living program by an organization listed according to 27.2(1), paragraph “a,” may choose to send a copy of the accreditation document in lieu of the application for certification.

c. Upon receipt of appropriate documentation of voluntary accreditation, the department will deem the assisted living program as certified and notify the assisted living program that it has been listed.

27.2(2) Application process.

a. Application materials may be obtained from the Iowa department of elder affairs.

b. The applicant shall submit two copies of the completed application and the certification fee to the Iowa department of elder affairs.

27.2(3) Application contents. Applications submitted to the department for certification and re-certification of an assisted living program shall include the following:

a. A listing with the name, address and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors, trustees and the designated manager, as well as stockholders, partners or any individuals who have greater than a 10 percent equity interest in the program. The entity shall notify the department of any changes in the list within ten working days;

b. A statement affirming that none of the individuals listed in 27.2(3), paragraph “a,” have been convicted of a felony or found in violation of the dependent adult abuse code in any state;

c. A statement disclosing whether any of the individuals listed in 27.2(3), paragraph “a,” have or have had an ownership interest in an assisted living program, home health agency, residential care facility or licensed nursing facility in any state which has been closed due to removal of program, agency, or facility licensure or certification or involuntary termination from participation in either the Medicaid or Medicare programs; or have been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect;

d. A copy of the policy and procedure for evaluation of each tenant in accordance with subrule 27.3(1), including:

(1) Any assessment tool to be used to identify the tenant’s ability to function independently; or

(2) Indication that the assisted living program is using the long-term care coordinating unit’s (LTCCU) designated assessment tool; or

(3) Indication that the assessment is included in the occupancy agreement.

e. Identification of target population, if applicable;

f. A copy of the service plan format;

g. If the assisted living program is contracting personal care or health-related care services from a certified home health agency or a licensed health care facility, copy of that entity’s license;

h. Medication policy;

i. A policy describing accident and emergency response procedures;

j. A copy of the occupancy agreement;

k. The process for managing risk and upholding tenant autonomy when tenant decision making may result in poor outcomes for the tenant or others;

l. Documentation by a qualified professional that the following systems have been inspected and are found to be installed and maintained in conformance with manufacturer’s recommendations and nationally recognized standards: heating, cooling, water heater, electricity, plumbing, sewage, artificial light, and ventilation; and, if located on site, garbage disposal, cooking, laundry, and elevators;

m. A copy of the food service establishment or health care facility license for the food service;

n. A copy of the documentation signed by the state fire marshal or designee showing that the structure meets the requirements of 661 IAC 5.626(231C);

o. A copy of the assisted living program’s fire safety procedure; and

p. A copy of the floor plan for any structures operated as part of the assisted living program.

27.2(4) *Certification process.*

a. The department or its designee shall review the application for completion within five working days and notify the applicant of application status.

b. The department or its designee(s) shall determine whether or not the proposed assisted living program meets applicable administrative rules contained in 321—Chapter 27 within 30 days of receiving all finalized documentation.

c. The department or its designee shall send notification to the assisted living program within five working days of determination.

d. The department shall maintain a list of assisted living programs certified by the department or voluntarily accredited. The list will be available from the department on request.

27.2(5) *Scope of certificate.*

a. *Duration of certificate.* Certification as an assisted living program by the department will be applicable for two years, unless obtained through subrule 27.2(5), paragraph “b” or “d,” or suspended or revoked.

b. Expanded certificate. The department may certify for three or four years an assisted living program which demonstrates above-standard or exemplary operation.

c. Transference of certificates. A certificate, unless suspended or revoked, will be transferable to a new owner/sponsor. The new owners/sponsors are required to notify the state within 30 days prior to the change in ownership. The notice shall include assurance that the new owner will meet all requirements of 321—Chapter 27.

d. Transitional provisions. Programs that were operational prior to July 1, 1996, will be granted certification for one year from the date of issuance. At the end of the one-year certification, the program must meet all applicable administrative rules contained in 321—Chapter 27 to renew certification. Upon certification, the program shall be subject to rule 27.11(231C).

e. Renewal of certification. A certificate for an assisted living program, unless suspended or revoked, shall expire at the end of the time period specified in the certificate and shall be renewed upon application by the owner or operator in accordance with this paragraph. In order to obtain a renewal of the assisted living program certification, the applicant must submit:

- (1) The completed application form at least 30 days prior to the expiration of such certificate;
- (2) The required certification fee for an assisted living program with the application for renewal;
- (3) Documentation by a qualified professional that the following systems have been inspected and are found to be maintained in conformance with manufacturer's recommendations and nationally recognized standards: heating, cooling, water heater, electricity, plumbing, sewage, artificial light, and ventilation; and, if located on site, garbage disposal, cooking, laundry, and elevators;
- (4) If the assisted living program is contracting personal care or health-related care services from a certified home health agency or a licensed health care facility, copy of that entity's current license or monitoring report;
- (5) A copy of the food service establishment or health care facility current license for the food service;
- (6) A copy of the documentation signed by the state fire marshal or designee showing that the structure meets the requirements of 661 IAC 5.626(231C);
- (7) Appropriate changes in the documentation submitted for certification to reflect any changes in the assisted living program; and
- (8) An assurance that all other elements of the assisted living program's operation remain the same as previously submitted.

321—27.3(231C) Conditions for occupancy and transfer.

27.3(1) Evaluation of tenant. Each assisted living program shall have written policies and procedures for the evaluation of each tenant's functional ability and health status and the determination of needed services prior to occupancy and as needed.

27.3(2) Signed agreement. Each tenant shall sign an occupancy agreement and managed risk statement prior to occupancy.

27.3(3) Occupancy and transfer criteria.

a. An assisted living program shall not knowingly admit or retain a tenant:

- (1) Who requires more than part-time or intermittent health-related care;
- (2) Who is dangerous to self or others;
- (3) Who is in an acute stage of alcoholism, drug addiction, or mental illness;
- (4) Who is under age 18; or
- (5) Who meets the assisted living program's transfer criteria.

b. An assisted living program may have additional occupancy or transfer criteria if disclosed in writing prior to occupancy.

c. An assisted living program may request an exception to the provision of 27.3(3)“a”(1) in accordance with the requirements of 321—27.6(231C).

27.3(4) Transfer planning. The assisted living program shall assist a tenant who requires more services than the assisted living program is able to provide in making arrangements for care in an alternative setting.

321—27.4(231C) Services.

27.4(1) Service plan required.

a. An individualized service plan shall be developed for each tenant:

(1) In consultation with the tenant and, at the tenant’s request, with the family member(s) or designated responsible party;

(2) Prior to occupancy and updated at least annually or whenever changes in need are identified; and

(3) When the tenant needs personal care or health-related care, the service plan shall be developed in consultation with a multidisciplinary team, which consists of no less than three individuals, including a health care professional and a person with a bachelor’s degree in a human services-related field.

b. The service plan shall be individualized and shall indicate, at a minimum:

(1) The tenant’s identified needs and requests for assistance;

(2) Any services and care to be provided per agreement with tenant;

(3) The provider(s) if other than the assisted living program; and

(4) Transfer and referral arrangements for health care providers selected by each tenant.

27.4(2) Medications. Each assisted living program shall have a written medication policy which includes the following:

a. Tenants are allowed to self-administer medications unless the prescription states that tenant is not to self-administer the medication or the tenant delegates administration to the assisted living program by occupancy agreement or signed service plan.

b. Tenants may keep their own medications in their possession unless the prescription states that the medication is to be stored by the assisted living program or the tenant delegates partial or complete control of medications to the assisted living program by occupancy agreement or signed service plan.

c. The program shall list in a tenant’s record any medications to be stored or administered by the program.

d. The following requirements shall apply to medications which are supervised or administered by the assisted living program:

(1) Supervision of self-medication and administration of medications shall be provided by a practitioner or the practitioner’s authorized agent in accordance with 655—subrule 6.2(5) and Iowa Code chapter 155A.

(2) The program shall document by exception any medication the program has agreed to administer or supervise which is not taken by the tenant.

e. The following requirements shall apply to medications which are stored by the assisted living program:

(1) The medications shall be kept in a secure place that is not accessible to persons other than employees responsible for the supervision of such medications.

(2) The medications shall be labeled and maintained in compliance with label instructions and state and federal laws.

(3) No person other than the dispensing pharmacist shall alter a prescription label.

(4) Each tenant's medication shall be stored in its originally received container.

(5) When delegated partial or complete control by the tenant, medications may be transferred from the original prescription containers into medication reminder boxes or medication cups within the tenant's unit.

27.4(3) Meals.

a. The assisted living program shall have the capacity to provide hot or other appropriate meals at least once a day or coordinate with other community providers to make arrangements for the availability of meals.

b. Meals provided by the assisted living program but not prepared on site shall be obtained from or provided by an entity licensed for meal preparation.

27.4(4) Service and medication records. The assisted living program shall maintain a service and medication record for each tenant.

27.4(5) Nurse review.

a. An assisted living program which administers prescription drugs or provides physician-directed or health-related care shall provide for a registered nurse to:

(1) Monitor each tenant receiving program-administered prescription drugs for response to program-administered medications, ensure that the prescription drug orders are current, and that the prescription drugs are administered consistent with such orders at least every 30 days; and

(2) Ensure that physicians' orders for tenants receiving physician-directed care from the assisted living program are current at least every 30 days; and

(3) Assess and document the health status of each tenant receiving health-related care, make recommendations as appropriate and monitor progress on previous recommendations at least every 90 days.

b. The registered nurse shall provide the assisted living program with signed, dated and timed written documentation of the above activities.

321—27.5(231C) Staffing.

27.5(1) Sufficient trained staff shall be available at all times to fully meet tenant's identified needs.

27.5(2) Each tenant shall have access to a 24-hour personal emergency response system which automatically identifies the tenant in distress and can be activated with one touch.

27.5(3) The owner or sponsor of the assisted living program is responsible for ensuring that both management and direct service employees receive training appropriate to the task.

27.5(4) Any nursing services shall be available in accord with Iowa Code chapter 152 and 655—Chapter 6.

27.5(5) The assisted living program shall have a training and staffing plan on file and shall maintain documentation of training received by staff.

27.5(6) The owner or sponsor of the assisted living program may employ a qualified manager who is at least 21 years of age.

27.5(7) All personnel of the assisted living program shall be able to implement the assisted living program's accident, fire safety and emergency procedures.

321—27.6(231C) Exceptions to service limits. The department may grant on a time-limited basis an exception to the service limits of this chapter for a tenant who temporarily needs hospice care or more than part-time or intermittent health-related care.

27.6(1) Procedures. The department:

a. Shall accept a written request from an assisted living program for exception to an individual tenant's service limit as soon as it becomes apparent to the assisted living program's staff that the tenant is going to need skilled nursing activities daily for more than the 21-day limit;

b. Shall respond in writing to such requests within two working days of receipt of necessary documentation;

c. Shall monitor the tenant medical and functional information for continued appropriateness of the exception regularly for the duration of the exception;

d. Shall keep exceptions to a minimum.

27.6(2) Criteria for service limit exception. The department may grant an exception if the assisted living program proves by clear and convincing evidence the following criteria are met:

a. It is the informed choice of the tenant to remain in the home; and

b. The assisted living program is able to obtain the staff necessary to meet the tenant's extended care needs in addition to the care of the other tenants; and

c. The exception shall not jeopardize the care, health, safety or welfare of the tenants.

321—27.7(231C) Financial.

27.7(1) Occupancy agreement.

a. The assisted living program shall enter an occupancy agreement with each tenant for assisted living housing and services that clearly describes the rights and responsibilities of the tenant and of the provider.

b. The occupancy agreement shall also include, but not be limited to, the following:

(1) Description of all fees, charges and rates describing tenancy and basic services covered, any additional and optional services and related costs;

(2) Statement regarding the impact of the fee structure on third-party payments and whether third-party payments and resources will be accepted by the assisted living program;

(3) Procedure for nonpayment of fees;

(4) Identification of party responsible for payment of fees;

(5) Guarantee that the assisted living program will notify the tenant in writing at least 30 days in advance of any changes to the occupancy agreement and guarantee that all tenant information will be maintained in a confidential manner to the extent allowable under state and federal law;

- (6) Occupancy and transfer criteria;
- (7) Emergency response policy; and
- (8) The staffing policy which identifies whether or not staff is available 24 hours a day, whether or not task delegation will be used, and how staffing will be adapted to changing tenant needs.

27.7(2) *Managed risk statement.* The assisted living program shall have a managed risk statement which includes the tenant's or responsible person's signed acknowledgment of the shared responsibility for identifying and meeting needs and the process for managing risk and upholding tenant autonomy when tenant decision making may result in poor outcomes for the tenant or others.

27.7(3) *Tenant funds management.* The assisted living program shall have written policies, procedures and accounting records for handling tenant's financial resources. If the assisted living program or staff agree to manage a tenant's financial resources:

- a.* Appropriate documentation of income and expenditures for each tenant whose funds are managed shall be available; and
- b.* Tenants' funds shall be kept in a separate account.

321—27.8(231C) Structure.

27.8(1) The structure of the assisted living program shall be designed and operated to meet the needs of the tenants.

27.8(2) Building and grounds shall be well maintained, clean, safe and sanitary.

27.8(3) Assisted living programs may have private dwelling units with lockable doors and individual cooking facilities.

27.8(4) Dwelling units.

a. Each dwelling unit shall have at least one room which will have not less than 120 square feet of floor area. Other habitable rooms shall have an area of not less than 70 square feet.

b. Each dwelling unit shall have not less than 190 square feet of floor area, excluding bathrooms.

c. A dwelling unit used for double-occupancy shall have not less than 290 square feet of floor area, excluding bathrooms.

27.8(5) The assisted living program shall have a minimum common area of 15 square feet per tenant.

321—27.9(231C) Fire safety.

27.9(1) The assisted living program shall have a written fire safety procedure.

27.9(2) The assisted living program facility shall meet the fire safety standards designated for this category in 661 IAC 5.626(231C).

321—27.10(231C) Monitoring.

27.10(1) The department or its designee(s) will monitor a certified assisted living program at least once during the program's certification period.

27.10(2) All records and areas of the assisted living program deemed necessary to determine compliance with the requirements for certification under 321—Chapter 27 shall be accessible to the department or its designee for purposes of monitoring.

27.10(3) The area where food is stored, prepared or served by the assisted living program may be inspected annually by the department of inspections and appeals or its designee. If food is prepared in the assisted living program, a current food service establishment license shall be posted in the food service area.

321—27.11(231C) Complaint procedure. Any person with concerns regarding the operations and service delivery of an assisted living program may file a written complaint with the community-based housing and services unit of the Department of Elder Affairs, 200 Tenth Street, Third Floor - Clemens Building, Des Moines, Iowa 50309-3609.

27.11(1) The complaint shall include the complainant's name, address, and telephone number, and shall be signed and dated by the complainant. The complaint shall identify the assisted living program and shall include the complainant's concerns regarding the program.

27.11(2) Upon receipt of a complaint made in accordance with this rule, the department shall make a preliminary review of the complaint. Within 20 working days of receipt of the complaint, the department shall make or cause to be made an on-site inspection of the assisted living program.

27.11(3) The department shall apply a preponderance of the evidence standard in determining whether or not a complaint is substantiated. Upon conclusion of the investigation, the department shall notify the complainant and assisted living program promptly of the results.

321—27.12(231C) Denial, suspension, or revocation. The department shall have the authority to deny, suspend or revoke a certificate in any case where the department finds there has been a substantial or repeated failure on the part of the assisted living program to comply with the requirements of 321—Chapter 27 or for any of the following reasons:

27.12(1) Cruelty or indifference to assisted living program tenants.

27.12(2) Appropriation or conversion of the property of an assisted living program tenant without the tenant's written consent or the written consent of the tenant's legal guardian.

27.12(3) Permitting, aiding, or abetting the commission of any illegal act in the program.

27.12(4) Obtaining or attempting to obtain or retain a certificate by fraudulent means, misrepresentation, or by submitting false information.

27.12(5) Habitual intoxication or addiction to the use of drugs by the applicant, manager or supervisor of the assisted living program.

27.12(6) Securing the devise or bequest of the property of a tenant of an assisted living program by undue influence.

27.12(7) Any of the individuals listed in 27.2(3), paragraph "a," have or have had an ownership interest in an assisted living program, home health agency, residential care facility or licensed nursing facility in any state which has been closed due to removal of program, agency, or facility licensure or certification or involuntary termination from participation in either the Medicaid or Medicare programs; or have been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect.

27.12(8) In the case of a certificate applicant or an existing certified owner or operator which is an entity other than an individual, the department may deny, suspend, or revoke a certificate if any individual, who is in a position of control or is an officer of the entity, engages in any act or omission proscribed by this chapter.

321—27.13(231C) Notice—hearings.

27.13(1) The denial, suspension, or revocation of a certificate shall be effected by delivering to the applicant or certificate holder by certified mail, return receipt requested, or by personal service of a notice setting forth the particular reasons for such action. Such denial, suspension, or revocation shall become effective 30 days after the mailing or service of the notice, unless the applicant or certificate holder, within such 30-day period, shall give written notice to the department requesting a hearing, in which case the notice shall be deemed to be suspended.

27.13(2) If the applicant or certificate holder requests a hearing, the department shall transmit the request to the department of inspections and appeals pursuant to 481 IAC 10.4(10A).

27.13(3) The hearing shall be conducted by the department of inspections and appeals pursuant to 481 IAC 10.1(10A) to 10.24(10A,17A).

27.13(4) At any time at or prior to the hearing, the department may rescind the notice of the denial, suspension, or revocation upon receipt of satisfactory evidence that the reasons for the denial, suspension, or revocation have been or will be removed.

321—27.14(231C) Appeals. All appeals shall be conducted pursuant to 321 IAC 2.7(4).

321—27.15(231C) Judicial review. Procedures for judicial review shall be conducted pursuant to 321 IAC 2.7(6).

321—27.16(231C) Records. The department collects and stores a variety of records in the course of certifying and monitoring assisted living programs. Some information stored may be personally identifiable. None is retrievable by personal identifier with the exception of a business which uses an individual's name in the title. Each assisted living program record maintained by the department contains both open and confidential information.

27.16(1) *Open information includes:*

- a. Certificate application and status;
- b. Final findings of state and Medicaid surveys;
- c. Records of complaints;
- d. Reports from the fire marshal;
- e. Plans of correction submitted by the program;
- f. Medicaid status;
- g. Official notices of certificate and Medicaid sanctions;
- h. Findings of fact, conclusions of law, decisions and orders issued pursuant to rules 27.12(231C), 27.13(231C) and 27.14(231C).

27.16(2) *Confidential information includes:*

- a. Survey or investigation information which does not comprise a final finding. Survey information which does not comprise a final finding may be made public in a proceeding concerning the citation of a program, denial, suspension or revocation of a certificate;
- b. Names of all complainants;
- c. Names of tenants of all assisted living programs, identifying medical information and the address of anyone other than an owner.

These rules are intended to implement Iowa Code chapter 231C.

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